

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

ALBY WU,	)	CASE NO. 2:24-CV-03783
	)	
Plaintiff,	)	JUDGE EDMUND A. SARGUS JR.
	)	
v.	)	MAGISTRATE JUDGE KIMBERLY
	)	A. JOLSON
CITY OF COLUMBUS, OHIO, <i>et al.</i> ,	)	
	)	<b><u>PLAINTIFF'S MOTION TO STAY</u></b>
Defendants.	)	<b><u>BRIEFING ON THE PENDING</u></b>
	)	<b><u>MOTION FOR JUDGMENT ON</u></b>
	)	<b><u>THE PLEADINGS</u></b>

Now comes Plaintiff Alby Wu, by and through undersigned counsel, and hereby respectfully requests that this Honorable Court issue an Order staying briefing on the pending Motion for Partial Judgment on the Pleadings (ECF No. 8) until after the Court rules upon Wu's Motion to Remand to State Court, which was filed two days earlier. (ECF No. 6.)

As the Southern District has instructed before, "[t]he motion to remand must be resolved before the motion to dismiss, because if remand is appropriate, then the state court should decide the motion to dismiss." *H.R. ex rel. Reuter v. Medtronic, Inc.*, 996 F. Supp. 2d 671, 675 n.2 (S.D. Ohio 2014). The Motion for Remand raises the threshold question of whether this Court has jurisdiction over this case. If this Court were to find that this matter should be remanded, it would render moot the Motion for Partial Judgment on the Pleadings. *Total Quality Logistics, LLC v. Traffic Tech, Inc.*, S.D. Ohio No. 1:22-cv-304, 2022 U.S. Dist. LEXIS 133142, at \*5 (July 26, 2022) (granting the plaintiff's motion to remand and denying the defendants' motion to dismiss as moot).

Moreover, if this Court were to not stay briefing on the pending motion, Wu may be prejudiced in responding to a motion that would be rendered moot upon a finding that remand is appropriate. Three months ago, Chief U. S. District Judge Algenon L. Marbley granted a motion to stay briefing on motions to dismiss pending resolution of a motion to remand:

For good cause shown, then, the Plaintiff's motion to stay briefing on motions to dismiss pending this Court's decision on Plaintiff's motion to remand (ECF No. 11) is hereby **GRANTED**. The motions for which briefing is stayed pending said resolution are ECF Nos. 24, 25, 27, and 34. A briefing schedule, if appropriate, will be set by this Court's order resolving the motion to remand.

*Applegarth v. Power Home Solar, LLC*, S.D.Ohio No. 2:24-cv-1309, 2024 U.S. Dist. LEXIS 100905, at \*5 (June 6, 2024). For good cause shown, Wu respectfully requests that this Honorable Court issue an Order staying briefing on the pending Motion for Partial Judgment on the Pleadings (ECF No. 8) until after the Court rules upon Wu's Motion to Remand to State Court. (ECF No. 6.) If the Court denies Wu's Motion to Remand, she respectfully requests leave to file a response in opposition to Defendants' Motion for Partial Judgment on the Pleadings within seven days after denial.

Respectfully submitted,

/s/ Kevin M. Gross

Kevin M. Gross, Esq. (0097343)

ZIPKIN WHITING CO., L.P.A.

The Zipkin Whiting Building

3637 Green Road

Beachwood, Ohio 44122

Phone: (216) 514-6400

Fax: (216) 514-6406

Email: kgross.zipkinwhiting@gmail.com

*Counsel for Plaintiff Alby Wu*

**PROOF OF SERVICE**

An electronic copy of the foregoing was served via CM/ECF on September 6, 2024,  
upon all counsel of record.

/s/ Kevin M. Gross  
Kevin M. Gross, Esq. (0097343)

*Counsel for Plaintiff Alby Wu*